

82-1717

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ALEXANDER L. STEVAS,
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CAROL J. KROENING,

PETITIONER,

vs.

ARCHDIOCESE OF MILWAUKEE,
a domestic non-stock
corporation, ARCHBISHOP
REMBERT G. WEAKLAND, and
REV. DENNIS C. KLEMME,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF
WISCONSIN, DISTRICT I

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QUESTION PRESENTED

Whether the state courts violated the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution by denying the petitioner her right to sue the Archdiocese of Milwaukee for annulling her valid Lutheran marriage?

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NO.

The unpublished opinion of the Court

Of Appeals of the State of Wisconsin, District I, appears in the appendix, p. 1. The Circuit Court of Milwaukee County entered judgment dismissing the petitioner's complaint on February 11, 1982.

JURISDICTION

The judgment of the Court of Appeals of the State of Wisconsin, District I was entered on November 16, 1982. A timely Petition for Review was denied by the Wisconsin Supreme Court on January 11, 1983; and this Petition was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

QUESTION PRESENTED

Whether the state courts violated the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution by denying the petitioner her right to sue the Archdiocese of Milwaukee for annulling her valid Lutheran marriage?

CONSTITUTIONAL PROVISIONS INVOLVED

This cases involves the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Petitioner, Carol J. Kroening, a Lutheran filed a lawsuit against the Archdiocese of Milwaukee, Archbishop Rembert G. Weakland, and Rev. Dennis C. Klemme for annulling her valid Lutheran marriage without her permission. In her complaint the petitioner alleged a federal question involving a violation of her First and Fourteenth Amendment rights would result if the trial court dismissed the lawsuit. Petitioner further complained that the First Amendment to the United States Constitution did not exempt the above named respondents from claims for invasion of

privacy, libel and slander and intentional infliction of emotional distress.

The trial court disagreed and dismissed the petitioner's complaint on the grounds that the respondents' conduct was protected by the First Amendment to the United States Constitution.

On appeal to the Court of Appeals, District I, the petitioner raised the issue that the dismissal by the trial court of the petitioner's complaint violated the petitioner's First and Fourteenth Amendment rights to the U.S. Constitution. The Court of Appeals, District I, however, affirmed the trial court's decision by stating that the petitioner's claims are barred by the Religion Clauses of the First Amendment to the U.S. Constitution as applied to the states through the Fourteenth Amendment. (See: Appendix pages 1 through 6) The Wisconsin Supreme Court denied a Petition for Review on January 11, 1983.

REASONS FOR GRANTING THE WRIT

I. THE DECISIONS OF THE STATE COURTS
VIOLATE THE ESTABLISHMENT CLAUSE
OF THE FIRST AMENDMENT TO THE
UNITED STATES CONSTITUTION.

The decisions of the Court of Appeals and the Circuit Court of the State of Wisconsin violate the Establishment Clause of the First Amendment to the United States Constitution by exempting religious societies from civil lawsuits. The state courts erroneously interpreted the United States Supreme Court's holding in The Serbian Eastern Orthodox Diocese For the United States of America and Canada et al. v. Dionisje Milivojevich et al., 426 U.S. 696, 49 L Ed 2d 151, (1976). The facts in the case at bar involve a non-Roman Catholic (third party) suing a religious society (voluntary association).

Traditionally, the United States Supreme Court has held, "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes..." See: Watson v. Jones, 13 Wall 679, at 714, 20 L Ed 666 (1872) In The General Council on Finance and Administration of the United Methodist Church vs. Superior Court of California, County of San Diego, (Frank T. Barr et al.) 439 U.S. 1369, 58 L Ed 2d 77, (1978) Justice Rehnquist upheld the constitutionality of a third party suit against religious societies where fraud, breach of contract, or statutory violations are alleged.

But this Court never has suggested that those constraints apply outside the context of such intra-organizational disputes. The Serbian Orthodox Diocese and the other cases cited by applicant are not on point.

General Council v. Cal Superior Court, supra. at p. 81.

II. THE FREE EXERCISE CLAUSE OF THE
FIRST AMENDMENT TO THE UNITED
STATES CONSTITUTION DOES NOT
GRANT A RELIGIOUS SOCIETY ABSOLUTE
FREEDOM TO PRACTICE ITS RELIGIOUS
BELIEFS.

Freedom to believe is an absolute right enjoyed by all religions; but freedom to practice one's religious beliefs is always subject to governmental regulation for the benefit of society. The Appellate and Trial Courts deliberately ignored the concept that First Amendment Rights are not absolute rights. See: N.Y. Times Co. v. Sullivan, 376 U.S. 254, 84 S Ct 710, 11 L Ed 2d 686, (1964); Cantwell v. State of Connecticut, 310 U.S. 296, 60 S Ct 900, 84 L Ed 1213, (1940); School District of Abington Township Pa. v. Schempp, 374 U.S. 203, 83 S Ct 1560, 10 L Ed 2d 844, (1963); Reynolds v. United States, 98 U.S. 145, 25 L Ed 244 (1879).

In the case at bar, the petitioner and thousands of non-Catholics throughout the United States are affected by the annulment practices of the respondent. Each year the Roman Catholic Church grants over 60,000 annulments in the United States. These include Catholics as well as non-Catholics.

In the Kroening case, the respondents mailed a questionnaire to petitioner's friends and relatives to elicit personal information about her sexual practices and views on contraception. The use of the questionnaire is an affront to the constitutional right to privacy the U.S. Supreme Court has recognized in Griswold v. State of Connecticut, 381 U.S. 479, 85 S Ct 1678, 14 L Ed 2d, 510 (1965).

The United States Supreme Court has consistently regulated harmful conduct by religious societies. As the Court stated

over 100 years ago in Reynolds v. United States, supra. at pages 166-167:

To permit unbridled behavior "would be to make the professed religious belief superior to the law of the land, and in effect, to permit every citizen to become a law unto himself. Government could exist in name only under such circumstances."

The Wisconsin Courts failed to balance the petitioner's right to sue the respondents for interference in her private life with the respondents' right to freely exercise its religious beliefs. The U.S. Supreme Court's ruling in Wisconsin v. Yoder, 406 U.S. 205, 32 L Ed 2d 15 (1972) mandates that courts employ a delicate balancing test when First Amendment Rights conflict with societies rights.

In Costello Publishing Co. v. Rotelle, 670 F. 2d 1035 (1981), the U.S. Court of Appeals for the District of Columbia reversed the U.S. District Court's dismissal of a lawsuit against the National Catholic Conference of Bishops for anti-trust violations.

In reversing the lower federal court, the Court of Appeals in an unanimous decision rejected the bishops' defense that their conduct was protected by the Free Exercise Clause of the First Amendment. In reversing and remanding the case to the trial court, the Court of Appeals adhered to the balancing test of Wisconsin v. Yoder, supra.

The involvement of religious societies in the secular realm presents reoccurring conflicts between the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution. The United States Supreme Court should grant certiorari to clarify and define the Constitutional guidelines in which a religion can become involved in the private lives of non-members.

The decisions of the Wisconsin courts foster and promote the canon law of the Roman Catholic Church. This type of entanglement

has been consistently rejected by the United States Supreme Court in Walz v. Tax Commissioner of New York, 397 U.S. 664, 90 S Ct 1409, 25 L Ed 2d 168 (1970) and Gillette v. U.S. 401 U.S. 437, 91 S Ct 828, 28 L Ed 2d 168 (1971).

The words of Justice Rehnquist in his dissenting opinion in the Serbian Orthodox Diocese case supra., succinctly summarize the crux of the petitioner's argument at p. 177 L Ed. 2d:

To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not accorded similar acts of secular voluntary associations, would, in avoiding the Free Exercise problems petitioners envision, itself create far more serious problems under the Establishment Clause.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Court of Appeals of the State of Wisconsin, District I.

Respectfully submitted,

Attorney for Petitioner

Joseph D. Frinzi

APPENDIX 1

No. 82-295

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT 1

CAROL J. KROENING,
Plaintiff-Appellant,

v.

ARCHDIOCESE OF MILWAUKEE,
a domestic, non-stock corporation,
ARCHBISHOP REMBERT G. WEAKLAND, and
REV. DENNIS C. KLEMME,

Defendants-Respondents

APPEAL from a judgment of the circuit
court for Milwaukee county: HAROLD B. JACKSON,
JR. Judge. Affirmed.

Before Decker, C.J., Moser, P.J., and
Brown, J.

MOSER, P.J. The dispositive issue¹
presented on appeal is whether Carol J.
Kroening's (Kroening) claims are barred by
the religion clauses of the first amendment
of the United States Constitution, as applied
to the states through the fourteenth amend-

ment,² and article 1, section 18 of the Wisconsin Constitution. We hold that both of the religion clauses bar Kroening's claims and therefore, we affirm the trial court's dismissal of the claims.

Kroening brought the instant action against the Roman Catholic Archdiocese of Milwaukee, Archbishop Weakland and the officialis of the metropolitan tribunal, Reverend Klemme, (Archdiocese)³ essentially alleging that she had been damaged as a result of the Archdiocese's having had annulled her prior Lutheran marriage to Charles Wildrick, Jr. (Wildrick).

The Archdiocese, under the authority of the canons of the Roman Catholic Church, annulled Kroening's prior marriage. This Roman Catholic annulment had no bearing on her prior marital status in the Lutheran Church or under Wisconsin civil law. The annulment was merely to allow Wildrick to

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marry in the Roman Catholic Church according to that religious denomination's canons and doctrines.

The first amendment to the United States Constitution reads in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."4

Article 1, section 18 of the Wisconsin Constitution provides:

The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

The question presented, when one raises an issue under the religion clauses, is

whether the particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so.⁵

It is well-established that the first and fourteenth amendments to the United States Constitution require that civil courts must defer to the resolution of issues of religious doctrine or polity by the highest court of hierarchical church organization.⁶ Wisconsin has also long held that civil courts must not determine questions of religious faith, doctrine or schism.⁷ Religious freedom encompasses the power of religious organizations to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.⁸ Accordingly, we hold that the United States Constitution and the Wisconsin Constitution bar the civil courts of this state from entertaining claims

emanating from any legitimate religious
donomination's internal church matters
of this nature.

By the Court.--Judgment affirmed.

Recommendation: Not recommended for
publication in the official reports.

APPENDIX

- ¹ We note that Kroening raises five primary issues on appeal; however, we determine that the issue as formulated is dispositive of this appeal. See State v. Waste Management, 81 Wis. 2d 555, 261 N.W. 2d 147, 151 (1978)
- ² The religion clauses of the first amendment were applied to the states through the fourteenth amendment in Abington School Dist. v. Schempp, 374 U.S. 203, 215-16 (1963)
- ³ For the purposes of this opinion, we will refer to the defendants-respondents collectively as the "Archdiocese."
- ⁴ We note that the first amendment prohibitions apply to the courts as well as the legislatures. See, e.g., Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969).
- ⁵ Walz v. Tax Comm'n of New York, 397 U.S. 664, 669 (1970).
- ⁶ Jones v. Wolf, 443 U.S. 595, 602 (1979); Serbian Eastern Orthodox Diocese v.

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Milivojevich, 426, U.S. 696, 724-725 (1976);
Watson v. Jones, 80 U.S. (13 Wall.) 679,
727 (1872).

We note that we are bound by the results
and interpretations given the first amend-
ment by the United States Supreme Court.
State ex rel Warren v. Nusbaum, 55 Wis 2d
316, 322, 198 N.W. 2d 650, 653 (1972).

7

Hellstern v. Katzer, 103 Wis. 391, 396, 79
N.W. 429 429, 430 (1899).

8

Kedroff v. Saint Nicholas Cathedral, 344
U.S. 94, 116 (1952).

APP. 7

CIRCUIT COURT
STATE OF WISCONSIN MILWAUKEE COUNTY

CAROL J. KROENING,
 Plaintiff,

vs.

JUDGMENT

ARCHDIOCESE OF MILWAUKEE,
et. al, CASE NO. 559-727
 Defendants.

The defendants moved to dismiss the complaint in this action, pursuant to sec. 802.06 (2) (f), Stats., upon the ground that the complaint failed to state a claim upon which relief can be granted. By order entered November 30, 1981, the Court dismissed Counts III and V of the complaint. By order entered February 9, 1982, the Court dismissed the remaining Counts, I, II and IV of the complaint.

Now, on motion of Foley & Lardner and Borgelt, Powell, Peterson & Frauen, S.C., attorneys for the defendants, the Court being duly advised in the premises.

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IT IS HEREBY ORDERED, ADJUDGED,
DECREED AND DECLARED that the complaint, and
each count thereof, and this action be and
they are hereby dismissed, with prejudice and
upon their merits.

Dated at Milwaukee, Wi this 11 th day
of February, 1982.

BY THE COURT:

s/ Harold B. Jackson, Jr.

CIRCUIT COURT JUDGE